



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, Washington 98101

June 21, 1993

Reply to
Attn of: HW-113

SPECIAL NOTICE LETTER FOR REMEDIAL DESIGN
CERCLA §104(e) REQUEST FOR INFORMATION
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Jones-Goodell Corporation
Dan Goodell
1690 Marine View Dr.
Tacoma, WA 98422

Re: Commencement Bay Nearshore/Tideflats Superfund Site;
Remedial Design for Mouth and Head of Hylebos Waterway
Problem Areas

Dear Sir:

In a general notice letter, the United States Environmental Protection Agency (EPA) notified the above-referenced party, or an affiliated company, of its potential liability under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), as amended (CERCLA) for response actions and costs related to the cleanup of the Commencement Bay Nearshore/Tideflats (CB/NT) Superfund site. As the listed contact person for the potentially responsible party (PRP) identified above, this letter has been sent to your attention.

This letter serves three basic functions. First, this letter notifies you that a 60-day period of formal negotiations with EPA for performance of remedial design activities for sediment cleanup at the Mouth and Head of Hylebos Waterway problem areas will begin on the effective date noted in this letter. Second, it contains a formal demand for reimbursement of costs that have been incurred, and that are expected to be incurred, including interest accrued on past and future costs, in response to the health and environmental concerns at the CB/NT site. Finally, this letter serves as a request for information under Section 104(e) of CERCLA, for environmental information not previously provided by you or your company.

USEPA SF



1246683

PRCHHJONG15NL062193

NOTICE OF POTENTIAL LIABILITY

As indicated in the general notice letter previously sent to you or your company, EPA has information indicating that you or your company may be a PRP as defined at Section 107(a) of CERCLA, with respect to the CB/NT Superfund site. The Record of Decision (ROD) for CB/NT, issued on September 30, 1989, and the Remedial Investigation/Feasibility Study (RI/FS) on which it was based, documented the release or threat of release of hazardous substances at the CB/NT site. The Mouth and Head of Hylebos Waterway problem areas are two of the eight contaminated problem areas within the CB/NT site identified for sediment remediation and cleanup in the ROD.

In addition, EPA is hereby providing notice to PRPs of potential natural resource damage claims by the federal, tribal, and state Natural Resource Trustees for the CB/NT site. In accordance with its responsibilities described in Section 104(b)(2) of CERCLA, EPA has notified the Natural Resource Trustees of potential injuries to natural resources and is coordinating site assessments, investigations, and planning with federal, tribal, and state trustees. The Natural Resource Trustees have indicated their desire to participate in remedial design negotiations.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA will facilitate a settlement between EPA and PRPs for this site. Accordingly, this letter triggers a 60-day moratorium on certain EPA response activities at the site, starting on July 21, 1993. During this moratorium, the PRPs have the opportunity to negotiate an agreement with EPA whereby the PRPs would perform remedial design (RD) for sediment cleanup at Hylebos Waterway. The 60-day negotiation period ends on September 20, 1993. If EPA receives a good faith offer, as described below, by September 20, 1993, EPA will extend the moratorium period for an additional thirty (30) days, until October 20, 1993. In order for the PRPs to conduct the RD, an agreement between EPA and the PRPs in the form of an Administrative Order on Consent ("Consent Order") must be reached by the end of the moratorium period.

DRAFT CONSENT ORDER AND STATEMENT OF WORK

EPA will provide a draft Consent Order and Statement of Work (SOW) to the PRP's designated steering committee no later than July 21, 1993. The Consent Order will establish the legal basis for conducting the work, describe how the work will proceed and how EPA will approve the remedial design, provide for reimbursement of EPA's oversight costs, and institute measures for the resolution of disputes and the assessment of stipulated

penalties. The specific investigation and design work to be accomplished will be described in the SOW, which is an appendix to the Consent Order. The SOW will describe the work to be performed and identify the work plans, reports, and other submissions required for implementation of the design work.

A brief summary of the work which will be required under the Consent Order and SOW is listed below:

- (1) Development of a Pre-Design Work Plan and Remedial Design Work Plan for sediment remediation containing a detailed description of the sampling to be performed and a description of how the RD will be implemented.
- (2) Sediment remedial design sampling and analysis. PRPs must perform all sampling necessary for the remedial design, including, but not limited to:
 - o Baseline monitoring to further characterize the Hylebos Waterway problem areas, and to collect information needed for the evaluation of disposal options for sediments requiring remediation.
 - o Determination of volume and characteristics of sediments requiring remediation.
 - o Evaluation of the environmental effects of dredging and disposal by the selected method(s), and characterization of potential disposal and habitat mitigation sites.
 - o Collection of biological and chemical data necessary for the natural resource damage assessment. (Some of this data collection may be performed by the Natural Resource Trustees or their contractors using funding contributed by PRPs.)
- (3) Development and evaluation of alternatives for sediment remediation consistent with the ROD (i.e., capping in place, aquatic disposal, nearshore disposal, and/or upland disposal), including an analysis of the potential for off-site disposal under a Puget Sound Dredged Disposal Analysis (PSDDA) permit, and the potential for natural recovery.
- (4) Development of Remedial Design plans and specifications, including plans for:
 - o Dredging.
 - o Transport and disposal of dredged material.

- o Disposal facility design.
- o Habitat mitigation, if necessary.
- o Long-term monitoring.

GOOD FAITH OFFER

In accordance with negotiation procedures set forth in Section 122 of CERCLA, the PRPs must submit a "good faith offer" to EPA within sixty (60) days after the effective date to demonstrate the PRPs' qualifications and willingness to conduct or finance the RD work. The good faith offer must include the following information:

- (1) An unqualified statement of willingness by the PRPs to conduct the RD which is consistent with EPA's draft Consent Order and SOW;
- (2) A paragraph-by-paragraph response to EPA's draft Consent Order in a red-line format;
- (3) A demonstration of the PRPs' technical capability to carry out the RD, including the identification of the firm(s) that may actually conduct the work or a description of the process the PRPs will use to select the firm(s);
- (4) A demonstration of the PRPs' capability to finance the RD;
- (5) An unqualified statement of willingness by the PRPs to reimburse EPA for costs incurred in overseeing the PRPs' conduct of the RD; and
- (6) The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

PRP STEERING COMMITTEE

EPA strongly recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a negotiating group to represent the interests of all PRPs is critical for successful negotiations with EPA. EPA does not have the resources to negotiate with individual persons or companies, nor can the RD work be accomplished in an efficient or timely manner by individual groups or companies. To facilitate formation of a steering committee, a list of the names and addresses of the PRPs receiving this Special Notice Letter is included as Enclosure A.

A group of PRPs has been meeting to discuss the technical requirements of the RD and the terms of an agreement by which several PRPs can participate and fund it. R. Paul Beveridge of Heller, Ehrman, White, and McAuliffe is the designated contact for this group. He can be reached at (206) 447-0900.

Additionally, one of the intended goals of this letter is to facilitate discussion among all PRPs associated with the Hylebos Waterway for purposes of participation in the RD process. EPA recognizes that the PRPs represent a wide range of contribution to sediment contamination in the waterway and a similar range of ability to pay for the RD work. Although this presents a challenging situation, EPA encourages discussion that will lead to a comprehensive settlement for RD and provide for participation by all parties either by conducting or helping pay for the RD work. It is our understanding that a group of PRPs have been working together to develop an allocation scheme and EPA has therefore not devoted resources to developing an independent allocation scheme at this time.

Despite the complexities presented by the site and the inability to use a simple volumetric ranking for allocating responsibility, EPA believes that agreement among PRPs on a fair allocation scheme is a reasonable expectation. Consequently, EPA is not accepting offers for a de minimis or other minor party settlement for performance of the RD at this time. After RD is completed, negotiation of a consent decree for performance of the remedial action will be initiated. A comprehensive agreement among PRPs on cost sharing at this stage should also expedite the negotiation process for future remedial action.

EFFECTIVE DATE AND GENERAL MEETING

In the interest of allowing additional time for PRPs to organize amongst themselves, the effective date of this letter shall be July 21, 1993. EPA will provide a draft Consent Order and SOW for the Remedial Design, and the 60-day negotiation moratorium will start on the effective date.

On Wednesday, July 7, 1993, at 10:00 am, at the World Trade Center, 3600 Port of Tacoma Road, in Tacoma, EPA will hold a general PRP meeting to discuss general technical and legal issues regarding EPA's negotiation period for an Administrative Order on Consent for Remedial Design and to answer questions.

DEMAND FOR PAYMENT

This letter also serves as a demand for reimbursement of all costs incurred by EPA for response actions at the CB/NT site associated with the Mouth and Head of Hylebos Problem Areas.

In accordance with Section 104 of CERCLA, EPA already has undertaken certain actions and incurred certain costs at the CB/NT site, a portion of which EPA has identified as associated with its response to conditions at the Mouth and Head of Hylebos Problem areas. These response actions include, but are not limited to: conducting an RI/FS, completing a ROD, conducting a search for PRPs, funding a cooperative agreement with the Washington Department of Ecology (Ecology) to carry out source control activities, coordinating with Natural Resource Trustees, and holding public meetings. The cost to date of the response actions performed at the CB/NT site with respect to the Mouth and Head of Hylebos Waterway problem areas through EPA funding is approximately \$2,961,000.00. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 or under any other provisions of law.

As EPA continues to expend costs for response actions at the CB/NT site, you will be liable for these expenditures associated with the Mouth and Head of Hylebos Problem areas, plus interest.

REQUEST FOR INFORMATION

In addition to notifying you of the start of a negotiation moratorium, this letter serves as a request for information under the authority of Section 104(e) of CERCLA. Your response to the requested information must be provided to EPA within thirty (30) calendar days after your receipt of this letter.

You are requested to provide the following information:

- (1) Provide a summary of your knowledge of any release(s) to the environment on any property owned or occupied by you or your company in the vicinity of the Hylebos Waterway, or in the Waterway itself, which have not been previously disclosed to EPA or have occurred or been discovered since you responded to EPA's earlier information request.
- (2) Describe all environmental investigations (including investigations of the physical and chemical characteristics of the soil, surface water, sediment, air, and groundwater) conducted by you, a consulting firm on your behalf, or any agency on properties owned or occupied by you or your company in the vicinity of Hylebos Waterway, which were not described in your earlier response to EPA's previous information request. Provide the following information:
 - a. Copies of all investigation reports in your possession, or the location of all such reports that are not in your possession;

- b. A list of dates upon which all environmental investigations were done or are planned to be done;
 - c. The purpose of each environmental investigation;
 - d. The results of each environmental investigation;
 - e. Any actions taken in response to the environmental investigation; and
 - f. Copies of all sampling data generated as a result of the environmental investigations.
- (3) The name, address, and telephone number of a person whom EPA can contact if we have questions about environmental sampling at your facility.

If such information is voluminous and has been previously provided to EPA or Ecology as part of an ongoing permit or enforcement action, it is not necessary to provide the information again. Instead, inform EPA in your response of the order or permit under which the work is being or has been performed, the person or department within EPA or Ecology to whom the information has previously been sent, and the date (month and year) the information was sent.

Please be aware that compliance with this information request is mandatory. Your legal obligation to respond truthfully to each question within the prescribed period is independent of your potential liability under Section 107 of CERCLA. Failure to respond within thirty (30) days of receipt of this request or to adequately justify failure to respond can result in enforcement action by EPA pursuant to Section 104(e) of CERCLA, which permits EPA to seek the imposition of penalties of up to \$25,000 for each day of continued non-compliance. Please be advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. §1001.

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 et. seq. You may, if appropriate, assert a confidentiality claim covering a part of the information requested pursuant to CERCLA Sections 104(e)(7)(E) and (F), 42 U.S.C. §§9604(e)(7)(E) and (F), and Section 3007(b) of RCRA, 42 U.S.C. §6927(b), and 40 C.F.R. 2.203(b). However, environmental investigation and characterization monitoring data and sampling data are not entitled to confidentiality protection.

ADMINISTRATIVE RECORD

Pursuant to CERCLA §113(k), EPA has established an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the response action selected for the CB/NT site are available to the public for inspection and comment at several locations, including the following:

Environmental Protection Agency
1200 Sixth Avenue, Seattle

Tacoma

Tacoma Public Library Main Branch
1102 Tacoma Avenue South, Northwest Room

McCormick Regional Branch Library
3722 North 26th

City of Tacoma Environmental Commission
747 Market Street, Suite 345

Tacoma-Pierce County Health Department
3633 Pacific Avenue

Pacific Lutheran University Library
121st and South Park Avenue

PRP RESPONSE AND EPA CONTACT PERSON

You are encouraged to contact EPA in writing before July 21, 1993, to indicate your willingness to participate in negotiations at this site. You may respond individually or through a steering committee. If EPA does not receive a timely response, EPA will assume you do not wish to participate in negotiations for performance of RD. You may be held liable by EPA under Section 107 of CERCLA for the cost of the response activities performed at the site and by the Natural Resource Trustees for natural resource damages. This request for a written notice is not the same as EPA's request for a "good faith offer" discussed above.

Your written response to this letter should be sent to:

U. S. Environmental Protection Agency
Allison Hiltner, Site Manager
Superfund Remedial Branch, HW-113
1200 Sixth Avenue
Seattle, Washington 98101

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon as, final EPA positions on any matter set forth herein.

If you have legal questions pertaining to this matter, please direct them to Lori Houck, Assistant Regional Counsel, at (206) 553-1115. Technical questions should be directed to Allison Hiltner, Remedial Project Manager, at (206) 553-2140.

Sincerely,



Carol Rushin, Chief
Superfund Remedial Branch

Enclosure

cc: P. Hertzog, Washington Department of Natural Resources
F. Gardner, Washington Department of Ecology
D. Smith, Washington Department of Ecology
R. McMillan, Washington Department of Ecology
R. Carman, Washington Department of Fisheries
J. Carleton, Washington Department of Wildlife
J. Manning, Washington Attorney General
R. Taylor, National Oceanic and Atmospheric Administration
C. Mebane, National Oceanic and Atmospheric Administration
B. Stein, Department of Interior
D. Frederick, U. S. Fish and Wildlife Service
R. Malcom, Muckleshoot Tribe
W. Sullivan, Puyallup Tribe
H. Um, Tacoma-Pierce County Health Department
K. Free, Department of Justice
L. Jones, EPA Office of Waste Programs Enforcement